

## **Summary of the Department of Homeland Security Reform Act of 2005**

Some of the ideas the Administration has set forth in its proposed reorganization of the Department of Homeland Security are positive steps – such as the creation of new policy office. However, some of the Administrations proposals are misguided, such as the effort to split FEMA’s preparedness and response functions and leave FEMA solely as a disaster response agency reporting to the Secretary.

Additionally, some of the offices the Administration plans to create on its own without seeking Congressional approval may be improvements in theory – such as the creation of a new Chief Intelligence Officer – but if Congress does not set out details for these new positions, their occupants will not have clear powers and oversight will be more difficult.

The Department of Homeland Security Reform Act of 2005 offers solutions where the Administration’s reorganization plan may create more problems. It also provides direction for some of the new positions the Administration plans to create on its own. Passage of the Homeland Security Reform Act is even more important now because the Fiscal Year 2006 Homeland Security Appropriations Conference Report accepts some of the Administrations proposals for reorganizing the Department, but does not provide many of the details that may be needed to make these initiatives work on a long-term basis.

The Department of Homeland Security Reform Act takes the following steps to improve the Department:

### *Quadrennial Homeland Security Review*

- Requires the Department’s Undersecretary of Policy to submit a Quadrennial Homeland Security Review every four years. Modeled after the format of the Quadrennial Defense Review conducted by the Department of Defense (10 U.S.C. 118), this new review will focus on the Department’s long-range strategic goals and the materials needed to fulfill them, such as manpower, equipment, and technology.<sup>1</sup>

### *Chief Intelligence Officer*

- In place of the dysfunctional Infrastructure Analysis and Infrastructure Protection Directorate, creates an Office of Intelligence & Analysis, headed by a Chief Intelligence Officer reporting directly to the Secretary.<sup>2</sup>

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<sup>1</sup> The FY 2006 Homeland Security Appropriations Conference Report requires DHS to complete a Quadrennial Review. This provision would provide more details about the content of that review.

<sup>2</sup> This Department of Homeland Security Reform Act eliminates the IAIP Directorate and splits its duties between a new Assistant Secretary for Preparedness (who is located in the Preparedness and Response Directorate, a newly reorganized version of the current Emergency Preparedness and Response Directorate) and the Chief Intelligence Officer (who reports directly to the Secretary). In comparison, the Administration’s Proposal creates the position of the Chief Intelligence Officer and has him report directly

- Requires the Chief Intelligence Office to develop intelligence analyses relevant to homeland security, specifically emphasizing domestic preparedness and critical infrastructure protection.
- Requires the Chief Intelligence Office to establish a Department-wide terrorist intelligence matrix that encompasses individuals and organizations suspected of terrorist involvement, as well as current and developing terrorist capabilities, tactics, and threats.
- Establishes the Intelligence Through Employees Generating Resources for Analytical Leadership (INTEGRAL) program, which will provide training, staff exchanges, and other educational opportunities for Department employees. INTEGRAL will help employees develop better practices for handling information they collect during their routine interactions with the public, as well as a better understanding of the value of this information.

#### *Directorate for Preparedness and Response*

- In place of the weak Emergency Preparedness and Response Directorate, creates a strong Directorate of Preparedness and Response that includes an intact, strengthened FEMA with a Director and Deputy Director who must have an extensive background in emergency or disaster-related management. The Deputy Director must be a career Federal employee.
- The Directorate will include a new Assistant Secretary for Preparedness who will head a consolidated version of the Office of State and Local Government Coordination and Preparedness, which is presently an isolated entity located in the Secretary's office.
- Creates a military liaison within the Directorate who will assist with the coordination of DOD and DHS preparedness and response efforts.
- Places the Office of the National Capital Region Coordination within the Directorate.

#### *Assistant Secretary of Physical Infrastructure Security*

- Establishes an Assistant Secretary of Physical Infrastructure Security within the Directorate of Preparedness and Response who will be responsible for all physical critical infrastructure programs within the Department.<sup>3</sup> The Assistant Secretary will also work with the Chief Intelligence Officer to complete threat and vulnerability assessments of physical critical infrastructure throughout the Nation.

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to the Secretary, but maintains the IAIP Directorate by renaming it the "Preparedness Directorate" and filling it with the infrastructure protection components of IAIP and various preparedness offices presently located elsewhere in the Department.

<sup>3</sup> The new Assistant Secretary for Physical Infrastructure Security will essentially be responsible for all the "infrastructure protection" programs located in the former IAIP, but this bill will strengthen the definition of those duties and responsibilities compared to current law. The Administration plans to create an "Assistant Secretary for Infrastructure Protection" within the Directorate of Preparedness that will be somewhat similar to the Assistant Secretary position this bill proposes, but the Administration is not seeking new Congressional authorization of the duties and responsibilities of that office.

#### *Assistant Secretary for Cybersecurity & Telecommunications*

- Establishes a National Cybersecurity Office within the Directorate of Preparedness and Response, which will be headed by an Assistant Secretary for Cybersecurity & Telecommunications.<sup>4</sup> The Assistant Secretary will be responsible for:
  - overseeing the National Communications System;
  - developing a method to improve information sharing with the private sector;
  - establishing a national cybersecurity threat reduction program and cybersecurity training program;
  - establishing and managing a national response system for cyberattacks;
  - coordinating and consulting with Federal, state, and local governments to enhance their cybersecurity programs; and
  - fostering Federal efforts to improve international cybersecurity awareness and cooperation.

#### *Chief Medical Officer*

- Establishes a Chief Medical Officer within the Directorate of Preparedness and Response, who will have the rank of Assistant Secretary and will be responsible for:
  - overseeing the Metropolitan Medical Response System;
  - developing material threat assessments and determinations for Project BioShield;
  - serving as a member of the Weapons of Mass Destruction Medical Countermeasures subcommittee of the National Science and Technology Council and the White House Office of Science and Technology Policy; and
  - consulting with the Department of Health and Human Services during the development of any request for proposals under Project BioShield, as well as consulting about the readiness capabilities of U.S. public health infrastructure to handle victims of a chemical, biological, radiological, or nuclear weapon attack.
- Requires the Chief Medical Officer to develop and update guidelines to be distributed to local authorities for medical plans for responding to biological, chemical, radiological, or nuclear weapon attacks.
- Requires the Chief Medical Officer to coordinate activities related to emergency management system terrorism preparedness.<sup>5</sup>

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<sup>4</sup> The Administration also seeks to create an Assistant Secretary for Cybersecurity and Telecommunications. However, the Administration plans to create this office without any Congressional action, which will make it more difficult to define the duties and powers of the Assistant Secretary or for Congress to hold the Assistant Secretary accountable for his actions.

<sup>5</sup> As with the Chief Intelligence Officer, the Administration proposes to create the Chief Medical Officer without seeking Congressional action. The Administration also does not clearly indicate whether the Chief Medical Officer will have the rank of Assistant Secretary. The Department of Homeland Security Reform Act provides more guidelines for the duties and powers of the Chief Medical Officer in order to help him succeed and to ensure Congress can conduct proper oversight.

### *ICE/CBP*

- Expresses the Sense of Congress that Immigrations and Customs Enforcement and Customs and Border Protection should be merged in order to eliminate inefficiencies and a lack of coordination created by these two agencies' separation.<sup>6</sup>

### *Transportation Security Administration*

- Requires the Secretary to report on how the Transportation Security Administration plans to allocate resources and take other steps to protect all modes of the Nation's transportation system from acts of terrorism.

### *Greater Accountability*

- Eliminates the Management Directorate and redistributes its responsibilities.<sup>7</sup>
- Provides the Chief Financial Officer with joint authority, along with the head of each office of the Department, over financial officers in each office.
- Provides the Chief Information Officer with joint authority, along with the head of each office of the Department, over information officers in each office.
- Provides the Chief Human Capital Officer with joint authority, along with the head of each office of the Department, over human capital officers in each office.
- Assigns overall responsibility for maintaining immigration statistical information from the CIS, CBP, and ICE agencies to the Secretary.

### *Whistleblower Protections*

- Allows an employee of DHS, an employee of a DHS contractor or subcontractor, or an employee of other companies working in homeland security areas to file a complaint with the Department of Labor if he/she is retaliated against for reporting a national or homeland security concern to their employer, GAO, a government Agency or Congress.
- If the Department of Labor does not act on the case within six months, the employee can bring a case in district court and is entitled to compensatory damages such as reinstatement, back pay, legal fees, and punitive damages.
- Requires judgment in favor of the employee if the government prevents the case from being heard because it asserts "State Secrets" privilege.
- Makes retaliation against whistleblowers a crime punishable by 10 years in prison.

### *Strengthened Privacy Office*

- Provides the Department's Privacy Officer with the power to (1) access all records she deems necessary to do her job; (2) undertake any privacy investigation that, in her judgment, is appropriate for her office; (3) subpoena documents from the private sector when necessary to fulfill her statutory mandate; (4) obtain sworn testimony; and (5) take the same actions that the Department's

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<sup>6</sup> The Administration does not propose merging ICE and CBP

<sup>7</sup> The Administration maintains the Management Directorate.

Inspector General may take in order to obtain answers to questions and responsive documents required for her investigatory work.

- Provides that the Privacy Officer shall serve a term of appointment of five (5) years – a change that will help insulate her from outside political pressures.
- Requires the Privacy Officer to submit reports directly to Congress regarding the performance of her duties, without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department or the Office of Management and Budget.

#### *Office of Tribal Security*

- Establishes an Office of Tribal Security to coordinate relations between the Department of Homeland Security and federally-recognized Indian tribes.

#### *Secure Handling of Ammonium Nitrate*

- Grants the Department regulatory authority over who can produce, sell, store, or distribute ammonium nitrate-based fertilizer. The Department would be required to consult with the Department of Agriculture in establishing regulations that:
  - create a registry of facilities that handle ammonium nitrate-based fertilizer;
  - limit distribution and sale of ammonium nitrate-based fertilizer to facilities that register with the Department; and
  - condition the distribution and sale of ammonium nitrate-based fertilizer on recording the name, address, telephone number, and registration number of the purchaser.